IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7501 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

VITHALBHAI HIRABHAI CHAUHAN

Appearance:

MR HARDIK C RAWAL for Petitioner

MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 30/11/2000

ORAL JUDGEMENT

The Gujarat State Road Transport Corporation has challenged the award of the Labour Court, Surat, made on 28.9.1987 by which the Labour Court ordered the respondent-workman to be taken back in service as a fresh

recruit and set aside the order of his dismissal passed by the competent authority pursuant to a departmental inquiry in which it was held that the delinquent was guilty of the misconduct of appropriating the amounts recovered by him from the passengers without issuing the tickets against such amounts.

2 In the domestic inquiry the charge levelled against the delinquent was that on 7.2.1980 while the delinquent was working as a conductor on the route from Surat to Porbandar and the bus came near the crossroads of Ankleshwar and was checked it was found that though a sum of Rs.17.35 was recovered from the passengers, tickets were not issued by the delinquent against that amount. The delinquent came to be dismissed on the said misconduct having been established as a result of the departmental proceedings.

3 Before the Tribunal the delinquent filed note exh.19 admitting his guilt and stating that he was very repentant and therefore a lenient view should be taken. The Tribunal observed that no Court of law has held the delinquent guilty for misappropriation and that if the delinquent is taken back in service as a fresh recruit, then, loss of his past service will be sufficient punishment and reduced the punishment of dismissal and substituted it by directing that he should be taken back in service as a fresh recruit. It is stated by the learned counsel that though ad interim relief was granted against the implementation of the impugned award on the condition that the provisions of Section 17-B of the Industrial Disputes Act, 1947, should be followed, an order was made on 20.2.1988 appointing the delinquent as a fresh recruit in compliance of the award and that the delinquent has remained in service since then.

4 The learned counsel for the petitioner-corporation submitted that when the delinquent had admitted that he had accepted the amount from the passengers and had not issued tickets against that amount, the punishment of dismissal that was imposed upon him was fully warranted and the Tribunal could not have altered that punishment by directing his appointment as a fresh recruit. The learned counsel for the petitioner has placed reliance on a decision of this Court in Gujarat State Road Transport Corporation v. Jamnadas reported in 1982 (2) GLH 1057 in which the Division Bench of this Court held that if a bus conductor had been dismissed for misappropriation of fares collected from the passengers without issuing tickets to them, his reinstatement in the same post would enable him to

indulge in the same malpractices in future. It will be noticed that in the said decision the Court observed that the Labour Court should think more than twice before directing reinstatement of such a person in the same post and depending on the facts and circumstances of the case and of the offender direct that he should be absorbed in the work-shop section or some other similar post which does not involve daily handling of money. It was held that the Labour Court was not justified in reinstating a conductor who had collected the fare, pocketed the same and robbed the national exchequer in the same post where he could re-indulge in the same weakness at public cost. The matter was remanded to the Labour Court for a fresh decision in accordance with law. The learned counsel for the Corporation also relied on a decision of this Court in G.S.R.T.C. v. K.M. Parmar reported in 34(1) GLR 302 in which it was held that the Labour Court does not have unguided powers to set aside the justified orders passed by the management and that power u/s 11-A of the said Act has to be exercised judicially and the Labour Court can interfere with the decision of the management only when the punishment imposed was highly disproportionate to the degree of guilt of the workman. In that case, the delinquent had reissued 15 used tickets which indicated that the workman had planned it in advance to collect the tickets from the passengers with a view to reissue same in the next trip. Moreover, he had not issued tickets to three passengers. It was held that the act of the workman was well designed to misappropriate the bus fares and that this was not a case where the Labour Court should have exercised its jurisdiction u/s 11-A of the Act.

5 In the present case it appears that before the ad interim relief was granted on 15.11.1988, the delinquent was already taken back in service as a fresh recruit by an order dated 20.2.1988 pursuant to the impugned award dated 28.8.1987 and that ever since then he has been working as a conductor. A copy of the order of his fresh appointment pursuant to the award is placed on the record of this petition. The delinquent had put in several years of service before he was dismissed in 1980. As noted by the Tribunal, he had remained unemployed from 1980 till he was directed to be reappointed. The Tribunal observes that the fact that his appointment would be treated as a fresh appointment was a sufficient punishment on the delinquent having regard to the fact that the delinquent has not been found guilty of misappropriation of any amount by any Court. In other words, the Tribunal seems to have treated the misconduct of the delinquent in not issuing the tickets as an

instance of gross negligence. The Tribunal has jurisdiction to alter the punishment u/s 11-A of the Act in cases where it finds that the punishment imposed is grossly disproportionate having regard to the facts and circumstances of the case. Having regard to the fact that the Tribunal has on the basis that no misappropriation was established reduced the punishment and to the fact that the delinquent was taken back in service pursuant to the impugned award on 20.2.1988 and has been working since all these years without any complaint, this is not a fit case where this Court would interfere with the impugned order on the ground that the Tribunal ought not to have reduced the punishment. The impugned award is made in lawful exercise of the jurisdiction of the Tribunal and it will not be proper for this Court to go behind the findings of fact as regards the nature of misconduct established against the delinquent. The petition is therefore rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

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